

2003 DRAFTING REQUEST**Bill**Received: **12/16/2003**Received By: **pkahler**Wanted: **Today**

Identical to LRB:

For: **Frank Boyle (608) 266-0640**By/Representing: **Mary Lou Keleher**This file may be shown to any legislator: **NO**Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Dom. Rel. - miscellaneous**

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Boyle@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Domestic partnership

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 12/16/2003	csicilia 12/17/2003					S&L
/1			pgreensl 12/17/2003		lnorthro 12/17/2003	lnorthro 12/18/2003	

12/18/2003 11:41:11 AM

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FE Seat For:

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FE Sent For:

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12-16

Marylou from Rep. Boyle's office

redraft 2001 AB 721 (LRB-3706/1)
as a bill for this session
(domestic partnership)

would like to introduce this week



2003

cjs

2004 ASSEMBLY BILL ~~721~~

Tues or
Wed

January 14, 2002 - Introduced by Representatives BOYLE, POCAN, CARPENTER, BERCEAU, BLACK, BOCK, MILLER, RICHARDS, RILEY, TRAVIS and YOUNG, cosponsored by Senators RISSER and GEORGE. Referred to Committee on Family Law.

3AV
Stat comp ✓

Reg cat.

- 1 AN ACT *to amend* 69.16 (1); and *to create* chapter 770 of the statutes; **relating**
- 2 **to: domestic partnership.** ✓

Analysis by the Legislative Reference Bureau

Current law specifies the requirements for contracting and for dissolving a marriage, which is defined in the statutes as a civil contract creating the legal status of husband and wife. In addition, the statutes set out various rights and responsibilities that apply to married persons or that result from the legal status of marriage.

This bill provides requirements for forming a legal relationship of domestic partnership. Under the bill, a domestic partnership may be formed by two individuals who are at least 18 years old and who are not married or in another domestic partnership. The individuals may not be related to each other by blood in any way that would prohibit them from marrying under the laws of the state (generally, not nearer of kin than second cousins) and must consider themselves to be members of each other's immediate family.

The procedure for obtaining a declaration of domestic partnership is similar to the procedure for obtaining a marriage license. The individuals apply for a declaration of domestic partnership to the county clerk of the county in which at least one of them has resided for at least 30 days. The application must be subscribed to by the parties, who must submit proof of identification to the county clerk. Just as with an application for a marriage license, the application must contain the social security numbers of the parties, as well as any other information that the department of health and family services directs. Just as with an application for a

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marriage license, a portion of the application for a declaration of domestic partnership contains information that is collected for statistical purposes only and is not open to public inspection. If the parties fulfill all of the requirements for forming a domestic partnership, the clerk issues to the parties a declaration of domestic partnership. The parties must complete the declaration, sign it in front of a notary, and submit it to the register of deeds of the county in which ~~the party~~ ^{either party resides}. After recording the declaration, the register of deeds must send the original to the state registrar of vital statistics.

The bill provides that any state statute or rule that applies to a married person or a formerly married person, such as a widow, applies in the same respect to a domestic partner or a person who was formerly a domestic partner; that any state statute or rule that applies to marriage or a marital relationship, including dissolution of a marriage, applies in the same respect to a domestic partnership; and that any state statute or rule that applies to a marriage document applies in the same respect to a declaration of domestic partnership. Thus, under the bill for example, the statutory divorce procedure and property division would apply to the dissolution of a domestic partnership; the marital property provisions of current law would apply to domestic partners; a domestic partner would have the same intestate inheritance rights as a spouse and the same election rights under a will; domestic partners would be entitled to adopt; domestic partners could file joint state income tax returns; a domestic partner could consent to an autopsy on the body of his or her deceased domestic partner; a domestic partner could make a claim for loss of society and companionship in the event of the wrongful death of his or her domestic partner; domestic partners could obtain a combined fishing license; a domestic partner would have an evidentiary privilege to prevent his or her domestic partner from testifying as to any private communication between the two during their domestic partnership; and a domestic partner could receive death benefits under the worker's compensation law as the result of the employment-related death of his or her domestic partner.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 69.16 (1) of the statutes is amended to read:

69.16 (1) The ~~Except as provided in ch. 770, the form, and content of,~~
application for, and registration of marriage documents shall be under ch. 765.

SECTION 2. Chapter 770 of the statutes is created to read:

CHAPTER 770

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DOMESTIC PARTNERSHIP

770.01 Definitions. In this chapter:

(1) “Domestic partner” means an individual who has signed and filed a declaration of domestic partnership in the office of the register of deeds of the county in which he or she resides.

(2) “Domestic partnership” means the legal relationship that is formed between 2 individuals under this chapter.

770.05 Criteria for forming a domestic partnership. Two individuals may form a domestic partnership if they fulfill all of the following criteria:

(1) Each individual is at least 18 years old and otherwise competent to enter into a contract.

(2) Neither individual is married to, or registered in a domestic partnership with, another individual.

(3) The 2 individuals are not related by blood in any way that would prohibit marriage under s. 765.03. ✓

(4) The 2 individuals consider themselves to be members of each other’s immediate family. ✓

770.07 Application. (1) (a) Individuals who wish to form a domestic partnership shall apply for a declaration of domestic partnership to the county clerk of the county in which at least one of the individuals has resided for at least 30 days immediately before applying.

(b) 1. Except as provided in subd. 2., the county clerk may not issue a declaration of domestic partnership until at least 5 days after receiving the application for the declaration of domestic partnership. ✓

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1 2. The county clerk may, at his or her discretion, issue a declaration of domestic
2 partnership less than 5 days after application if the applicant pays an additional fee
3 of not more than \$10 to cover any increased processing cost incurred by the county.
4 The county clerk shall pay this fee into the county treasury. ✓

5 (c) No declaration of domestic partnership may be issued unless the application
6 for it is subscribed to by the parties intending to form the domestic partnership; ~~it~~^e
7 contains the social security number of each party who has a social security number;
8 and ~~it~~^e is filed with the clerk who issues the declaration of domestic partnership.

9 (d) 1. Each applicant for a declaration of domestic partnership shall present
10 satisfactory, documentary proof of identification and residence and shall swear to,
11 or affirm, the application before the clerk who is to issue the declaration of domestic
12 partnership. In addition to the social security number of each party who has a social
13 security number, the application shall contain such informational items as the
14 department of health and family services directs. The portion of the application form
15 that is collected for statistical purposes only shall indicate that the address of an
16 applicant may be provided by a county clerk to a law enforcement officer under the
17 conditions specified under s. 770.18 (2). ✓

18 2. Each applicant for a declaration of domestic partnership who is under 30
19 years of age shall exhibit to the clerk a certified copy of a birth certificate, and shall
20 submit a copy of any judgment or death certificate affecting the applicant's domestic
21 partnership status. If any applicable birth certificate, death certificate, or judgment
22 is unobtainable, other satisfactory documentary proof may be presented instead.
23 Whenever the clerk is not satisfied with the documentary proof presented, he or she
24 shall submit the presented proof to a judge of a court of record in the county of
25 application for an opinion as to its sufficiency.

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1 (2) If sub. (1) and s. 770.05 are complied with, the county clerk shall issue a
2 declaration of domestic partnership. With each declaration of domestic partnership,
3 the county clerk shall provide a pamphlet describing the causes and effects of fetal
4 alcohol syndrome. After the application for the declaration of domestic partnership,
5 the clerk shall, upon the sworn statement of either of the applicants, correct any
6 erroneous, false, or insufficient statement in the application that comes to the clerk's
7 attention and shall show the corrected statement, as soon as reasonably possible, to
8 the other applicant.

9 **770.10 Completion and filing of declaration.** In order to form the legal
10 status of domestic partners, the individuals shall complete the declaration of
11 domestic partnership, sign the declaration, having their signatures acknowledged
12 before a notary, and submit the declaration to the register of deeds of the county in
13 which ^{either individual resides} ~~they reside~~. The register of deeds shall record the declaration and forward the
14 original to the state registrar of vital statistics.

15 **770.15 Forms for declaration.** (1) The application and declaration of
16 domestic partnership under s. 770.07 shall contain such information as the
17 department of health and family services determines is necessary. The form for the
18 declaration of domestic partnership shall require both individuals forming a
19 domestic partnership to sign the form and attest to fulfilling all of the criteria under
20 s. 770.05 (1) to (4).

21 (2) The department of health and family services shall prepare and distribute
22 forms under sub. (1) in sufficient quantities to each county clerk.

23 **770.17 Fee to county clerk.** Each county clerk shall receive as a fee for each
24 declaration of domestic partnership issued the same amount that the clerk receives
25 for issuing a marriage license under s. 765.15. Of the amount that the clerk receives

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1 under this section, the clerk shall pay into the state treasury the same amount that
2 the clerk pays into the state treasury from the fee collected for issuing a marriage
3 license. The remainder shall become a part of the funds of the county. For each
4 declaration of domestic partnership issued, the clerk shall also receive a standard
5 notary fee in the same amount that the clerk receives as a standard notary fee in
6 connection with issuing a marriage license and that may be retained by the clerk if
7 the clerk is operating on a fee or part-fee basis but which otherwise shall become part
8 of the funds of the county. ✓

9 **770.18 Records.** (1) The county clerk shall keep among the records in the
10 office a suitable book called the declaration of domestic partnership docket and shall
11 enter therein a complete record of the applications for and the issuing of all
12 declarations of domestic partnership, and of all other matters that the clerk is
13 required by this chapter to ascertain related to the rights of any person to obtain a
14 declaration of domestic partnership. An application may be recorded by entering
15 into the docket the completed application form, with any portion collected only for
16 statistical purposes removed. The declaration of domestic partnership docket shall
17 be open for public inspection or examination at all times during office hours.

18 (2) A county clerk may provide the name of a declaration of domestic
19 partnership applicant and, from the portion of the application form that is collected
20 for statistical purposes, as specified under sub. (1), may provide the address of the
21 declaration of domestic partnership applicant to a law enforcement officer, as defined
22 in s. 51.01[✓](11). A county clerk shall provide the name and, if it is available, the
23 address, to a law enforcement officer who requests, in writing, the name and address
24 for the performance of an investigation or the service of a warrant. If a county clerk
25 has not destroyed the portion of the declaration of domestic partnership application

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1 form that is collected for statistical purposes, he or she shall keep the information
2 on the portion confidential, except as authorized under this subsection. If a written
3 request is made by a law enforcement officer under this subsection, the county clerk
4 shall keep the request with the declaration of domestic partnership application form.
5 If the county clerk destroys the declaration of domestic partnership application form,
6 he or she shall also destroy the written request.

7 **770.20 Effect of forming domestic partnership.** Except in ch. 765, all of
8 the following apply:

9 (1) Any statute or rule that applies to a married person or a formerly married
10 person; including but not limited to a spouse; husband, if appropriate; wife, if
11 appropriate; widow, if appropriate; widower, if appropriate; or family member that
12 includes a spouse; applies in the same respect to a domestic partner or a person who
13 was formerly a domestic partner.

14 (2) *Except for 4.48.14(6),* Any statute or rule that applies to marriage or a marital relationship,
15 including dissolution of a marriage, applies in the same respect to a domestic
16 partnership.

17 (3) *Except for ss. 46.03(34), 69.01(16), and 69.16(1),* Any statute or rule that applies to a marriage license, certificate, or
18 document, *or* ~~including~~ the application or ~~an~~ applicant for such a document, applies in
19 the same respect to a declaration of domestic partnership *or the application or applicant for a declaration*

20 **SECTION 3. Effective date.**

21 (1) This act takes effect on the first day of the 13th month beginning after
22 publication.

23 (END)

Northrop, Lori

From: Keleher, Marylou
Sent: Thursday, December 18, 2003 11:31 AM
To: LRB.Legal
Subject: Draft review: LRB 03-3886/1 Topic: Domestic partnership

It has been requested by <Keleher, Marylou> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-3886/1 Topic: Domestic partnership